

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:F:MAN:1:POSTF-112618-02  
MBalachandran

date: **MAY 6, 2002**

to: Dennis Lapiotis, Team Manager, LMSB, Field Operations  
Manhattan, Territory 1100 - Manhattan, Team 1105  
Attn: David Litvin, Team Coordinator

from: Area Counsel  
(Financial Services)

subject: **[REDACTED] Corporation and Subsidiaries**  
**consolidated group ([REDACTED]-[REDACTED]) (EIN [REDACTED])**

**Language for Form 872**

**UIL No. 6501.08-17**

**The earliest statute of limitation on assessment for the taxable year at issue is set to expire on [REDACTED]**

This memorandum responds to your request for assistance in determining the proper entity to execute a consent to extend the statute of limitations (Form 872) for the above-referenced taxpayer. This memorandum should not be cited as precedent.

This advice is subject to 10 day post review by the National Office. Accordingly, we request that you do not act on this advice until we have advised you of the National Office's comments, if any, concerning this advice. In the meantime, you should consider the conclusions contained in this memorandum as preliminary.

**ISSUE**

Which is the proper entity to execute a Form 872 (Consent to Extend the Time to Assess Tax) for the tax years [REDACTED], [REDACTED], [REDACTED], and [REDACTED] ("years at issue"), the pre-restructuring tax years for [REDACTED] Corporation ("[REDACTED]")?

**CONCLUSIONS**

[REDACTED] is the proper party to execute a Form 872 (Consent to Extend the Time to Assess Tax) for the [REDACTED] and subsidiaries

consolidated group for the years at issue. The following language and format should be used for the Form 872: "[REDACTED] Corporation (EIN: [REDACTED]) and Subsidiaries." Following an asterisk at the bottom of page 1 of the Form 872, state: "With respect to the consolidated tax liability of [REDACTED] Corporation and Subsidiary Companies for [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]."

The "Corporate Name" above the taxpayer's signature line should be entered as "[REDACTED] Corp., as agent for the [REDACTED] Corp. & Subsidiaries Consolidated Group."

### FACTS

As detailed below, in [REDACTED], an [REDACTED] organized and existing under the laws of the [REDACTED], acquired [REDACTED] Corporation ("[REDACTED]"), a New York Corporation. As part of that acquisition, [REDACTED] and its subsidiaries became a subsidiary of the [REDACTED] Corporation (the "restructuring").

The details of the restructuring are as follows. On [REDACTED], [REDACTED] formed [REDACTED] Corporation. On [REDACTED], [REDACTED] formed [REDACTED] Corporation. On [REDACTED], [REDACTED] contributed its stock in both [REDACTED] and [REDACTED] Corporation to [REDACTED] Corporation in exchange for [REDACTED] Corporation stock. On [REDACTED], [REDACTED] (through [REDACTED] Corporation) purchased all the outstanding shares of [REDACTED] for cash. Simultaneously, [REDACTED] Corporation was merged into [REDACTED], with [REDACTED] being the surviving corporation. Immediately after the merger, [REDACTED] owned [REDACTED]% of [REDACTED] Corporation, which owned [REDACTED]% of [REDACTED] and [REDACTED]% of [REDACTED]. That basic structure is still in place.

Prior to [REDACTED], [REDACTED] was the parent of the consolidated group that conducted operations in the United States. After the merger, [REDACTED] Corporation was the parent of the consolidated group but [REDACTED] continued to exist as a subsidiary of [REDACTED] Corporation.

### DISCUSSION

The statute of limitations on assessment generally expires three years from the date the tax return for such period was filed. I.R.C. § 6501(a). The Service and the taxpayer may, however, enter into a written agreement to extend the statute. A Form 872 ("Consent to Extend the Time to Assess Tax") is used.

I.R.C. § 601(c)(4).

The common parent remains the agent for the members of the group for any year during which it was the common parent, whether consolidated returns are filed in subsequent years, whether one or more subsidiaries have become or have ceased to be members of the group, whether the common parent ceases to be the common parent or a member of the group in any subsequent year, and whether the group continues pursuant to Treas. Reg. § 1.1502-75(d). See Treas. Reg. § 1.1502-77(a)<sup>1</sup>; Southern Pacific v. Commissioner, 84 T.C. 395, 401 (1985).

Thus, where, as in our case, the common parent remains in existence, even if it is no longer the common parent, it remains the agent for the group with regard to years for which it was the common parent of the group. Treas. Reg. §§ 1.1502-77(a); 1.1502-77T(a)(4)(i). Here, prior to the restructuring, [REDACTED] was the common parent of the [REDACTED] and subsidiaries consolidated group. That is, [REDACTED] was the common parent of the [REDACTED] and subsidiaries consolidated group for [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] remained in existence following the restructuring although it ceased to be the common parent of the consolidated group of which it is a member. [REDACTED] therefore is a proper party to sign an extension of the statute of limitations with respect to [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

Also, we recommend that you pay strict attention to the rules set forth in the IRM. Specifically, IRM 8.1.1, chapter 3, provides procedures for processing consents to extend the statute of limitations on assessment. In the event an extension becomes separated from the file or lost, these other records would become invaluable to establish the agreement.

#### DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse

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<sup>1</sup> New regulations have been proposed under I.R.C. 1502 which are expected to be adopted shortly. Based on our review of the proposed regulations published for public comment we do not expect the answer in this memorandum to change if the proposed regulations are adopted as published. Under the proposed regulations also, the common parent remains the agent for the members of the group for any year during which it was the common parent, even if the common parent ceases to be the common parent in any subsequent year. Prop. Reg. § 1.1502-77(a)(4) (September 26, 2000).

) effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

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If you have any questions, telephone Murali Balachandran at (212) 264-1595, ext. 330.

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(Financial Services)

By: \_\_\_\_\_  
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